

Hurst and Harris; and

Claim 3 is rejected as being unpatentable over Vuillemot in view of Hillabush, Niswanger, Hurst, Harris and in further view of Fazzolari '493. Applicant again respectfully disagrees with Examiner's rejection of the claims.

Again, any rejection based upon § 103(a) must be supported by the following standard:

"To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of its success must both be found in the prior art, and not based on the applicant's disclosure." MPEP § 2142.

The above cited prior art patents do not define the following elements disclosed in the present invention:

Claim 1, line 14 - "...an upper pin shield attached between an inner surface of an upper end of said first side plate and an inner surface of an upper end of said second side plate forming an arch over said pin hole of said first side plate and said pin hole of said second side plate..."

Claim 1, line 19 - "said tang and aperture extending beyond said outer surface of said second side plate into said cylindrical locking collar;..."

Claim 2, line 5 - "...said locking pin, when engaged, would be partially visible below said upper pin shield in a horizontal plane."

The Examiner previously responded in part to Applicant's previous response, but has not fully considered the distinct differences contained within these claims.

The focus is primarily on the upper pin shield, from the applicant's standpoint. Harris and Mamo are cited as the reference which are identified by the Examiner as having this immediate claimed feature. Obviously, Hurst, Hillabush, Niswanger and Vuillemot do not have any shields and Hillabush does not even have a locking pin or anything which can be interpreted as a locking pin. The discussion will only involve Harris and Mamo.

Harris is clearly distinguished from the present invention, because Harris has a locking hat 19 which has locking posts 20 extending from respective ends of the locking hat with apertures 22, each aperture having a hole within which is placed a padlock shaft of a padlock 37, which retain bracket ears 18 pivoting on a hinge 17 connected to a yoke 16. There is no locking pin at all and no shield at all. This is a hybrid "pin" and the Examiner maintains that this hybrid "pin" shaft is the shield. This locking hat can't serve as both the pin shaft and the shield at the same time.

An Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination *in the manner claimed*. Particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected the components for combination in the manner claimed. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). Courts have consistently held that a person of ordinary skill in the art must not only have had some motivation to combine the prior art teachings, but some motivation to combine the prior art teachings in the particular manner claimed. *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000). Case law makes it clear that the best defense against the subtle but powerful attraction of a hind-sight based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine the prior art references. *In re Demiczak*, 175 F.3d 994, 999

(Fed.Cir. 1999).

Without the present invention and its disclosure, one could not consider the locking hat of Harris as a locking pin covered by the arched shield of the present invention. It requires the present invention to read-on the Harris elements, which is improper.

As compared to Mamo, Mamo contains a sleeve 16, but it is not “attached between an inner surface of an upper end of said first side plate and an inner surface of an upper end of said second side plate forming an arch over said pin hole of said first side plate and said pin hole of said second side plate...”. It simply slides over the special bolt 8 as the pin is being placed through the guard collar 9 and into the nut 10. Again, one would have to read-on from the present disclosure in order to misinterpret the elements of Mamo to the dissimilar elements of the present invention.

Addressing the further disclosure of Claim 2, which requires the upper pin shield to be attached to the respective end plates, with the placement and attachment of the shield allowing the lock pin, when engaged to be partially visible below the upper pin shield in a horizontal plane, as indicated in FIG 3 of the drawings. This clear language of claim 2 cannot be overlooked and set aside as it specifically discloses the relationship of the shield and the engaged locking pin.

It is fundamental that claims are to be construed in the light of the specification and both are to be read with a view to ascertain the invention. *Transitron Electronic Corp. v. Hughes Aircraft Co.*, 487 F. Supp. 855, 205 USPQ 799 (1980, DC Mass.). As to the particular vernacular of Claim 2 of the invention, the phraseology employed in the claims is the “guiding star” in the construction of the patent. *Super Products Corp. v. D P Way Corp.*, 546 F2d. 748, 756, 192 USPQ 417, 423-424 (1976, CA7 Wis.). There is nothing wrong in defining something by what it does rather than by what it is. *ReEcherd*, 471 F2d. 632, 176 USPQ 321 (1973, CCPA); *Re Swinehart*, 439 F2d. 210, 169

USPQ 226 (1971, CCPA); Re Fuetterer, 319 F.2d 259, 138 USPQ 217 91963, CCPA).

Moving onto the next distinguishable matter within Claim 1, beginning line 19, the tang and aperture of the locking pin extend beyond the outer surface of the second side plate into the cylindrical locking collar, with the keyed cylindrical lock securing to the tang and aperture while the lock is closely surrounded by the cylindrical lock collar.

The locking pin of Vuillamont and Niswanger have a locking pin extending through a side plate, but not into any cylindrical lock collar where the lock is closely surrounded by the cylindrical lock collar. Niswanger and Vuillamont have the lock clearly exposed for easy removal by a bolt cutter or cutting tool. Hillabush has a hardened tang 220 which goes through a slot 135 in a top member 100, but it does not have a lock pin, nor is it related to any other feature of the present invention, although it does have something to do with securing a **lunate** trailer hitch, not a ball hitch.

Prior art references must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Applicant was concerned, in order to be relied upon as a basis for the rejection of the claimed invention. *In re Oetiker, 997 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).* "Obvious to try" is not a valid test of patentability, and in the present case, it would not be obvious to try Hillabush to accomplish the task or method disclosed in the current invention, i.e., securing a **ball** trailer hitch. *See, In Re Mercier, 515 F.2d 1161, 185 U.S.P.Q. 774 (C.C.P.A. 1975).*

Claims 1 be allowed. Claim 2 should be allowed due to the further non-obvious disclosure of the upper pin shield, and Claims 2 and 3 should be allowed as dependant claims of Claim 1.

CONCLUSION

The applicant submits that the above-noted remarks put the application in condition for

allowance. Applicant therefore respectfully requests that the Examiner withdraw the outstanding objections and rejections contained in the Office Action of 12/27/2005, and pass this application to issue. Applicant expresses their appreciation to the Examiner for Examiner's attention and courtesy.

Respectfully submitted;



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